

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
ESP Leasing Corporation	)	File Number: EB-05-LA-071
	)	
Brookfield, Illinois	)	NAL/Acct. No.: 200632900006
	)	FRN: 0004161469
Operator of Unlicensed Land Mobile	)	
Transmitter Near Las Vegas, Nevada	)	

**FORFEITURE ORDER**

**Adopted: December 26, 2006**

**Released: December 28, 2006**

By the Regional Director, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of six thousand dollars (\$6,000) to ESP Leasing Corporation (“ESP”), for willful and repeated violations of Section 301 of the Communications Act of 1934, as amended, (“the Act”).<sup>1</sup> On February 9, 2006, the Los Angeles Office issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of \$10,000 to ESP after determining that ESP operated an unlicensed land mobile transmitter on 856.3625 MHz near Las Vegas, Nevada. In this *Order*, we consider ESP’s requests that the forfeiture amount be reduced given the nature of the violation, and ESP’s record of compliance as a Commission licensee.

**II. BACKGROUND**

2. On February 25, 2005, while conducting a routine audit of installed radio equipment on Black Mountain, in Las Vegas, Nevada, an agent of the Enforcement Bureau’s Los Angeles Office discovered six, 800 MHz, land-mobile transmitters installed in rented space in one of the mountaintop buildings. The callsign found on the equipment was WPOX419. Six frequencies were listed on the six transmitters, including 856.3625 MHz, and one of the transmitters was in operation.<sup>2</sup> The name “ESP Leasing” and a telephone number were also displayed on the transmitters. The agent noted that, for the Black Mountain location, no record for the transmitters could be found in the Commission’s database of licensed transmitters.

3. On March 2, 2005, the Los Angeles agent researched the Commission’s records for the callsign and frequency information displayed on the transmitters and determined that the transmitters were associated with callsigns WPOX419 and WPOX417. The licensed location for these stations, however, is Mt. Potosi, Nevada, a site approximately 20 miles from Black Mountain.<sup>3</sup> The Commission’s

<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> The other frequencies listed were 857.3625 MHz, 858.3625 MHz, 859.3625 MHz, 860.3625 MHz and 859.6375 MHz.

<sup>3</sup> The callsign WPOX419 was listed in the Commission’s Universal Licensing Service (“ULS”) database as licensed to AIRPEAK Communications, LLC, which authorized frequencies 858.3625 MHz, 859.3625 MHz and 860.3625 MHz on Mt. Potosi. Another AIRPEAK license, WPOX417, authorized 856.3625 MHz and 857.3525 MHz, also at Mt Potosi.

records showed that ESP was the licensee of WPOX419 and WPOX417, until December 14, 2004, when the licenses and transmitters were assigned to AIRPEAK Communications, Inc.<sup>4</sup> The owner of the rented building on Black Mountain reported that ESP had been paying the rent for the transmitters' space since April 1, 2000.

4. On April 27, 2005, Los Angeles agents again visited the Las Vegas, Nevada area. While monitoring the frequencies of the transmitters which had been found on Black Mountain, the agents heard significant traffic on 856.3625 MHz, without callsign identification. The agents used direction finding techniques to locate the source of the signals as Black Mountain. The agents then contacted a representative of AIRPEAK, who advised that AIRPEAK had recently acquired the WPOX417 and WPOX419 licenses from ESP but had not yet constructed new transmitters on Mt. Potosi.<sup>5</sup> The agents then contacted ESP, and a representative confirmed that the current operations on 856.3625 MHz from Black Mountain were from ESP's transmitter, and that the operations had been on-going for many months. When agents asked by what authority the transmitter was being operated, the ESP representative asked for an opportunity to research ESP's records. On April 28, 2005 the Commission's agents again monitored unidentified traffic on 856.3625 MHz, and again confirmed with direction finding techniques that Black Mountain was the source. Later that day, the representative from ESP contacted the agents and advised that several transmitters had been mistakenly located on Black Mountain, and that ESP would cease operations with them as soon as possible.

5. On August 25, 2005, the Los Angeles Office issued a Letter of Inquiry ("LOI") to ESP concerning ESP's ownership and operation of the unlicensed transmitters on Black Mountain. ESP sent a response ("Response") to the LOI on September 9, 2005. In its Response, ESP stated that it had mistakenly relocated the six transmitters to Black Mountain while it was still the licensee, and had subsequently assigned its license for the frequencies, but had been operating the transmitters from Black Mountain since approximately September 2004. ESP also stated that it ceased operation of the transmitters on April 28, 2005.

6. On February 9, 2006, the Los Angeles Office issued a *NAL* in the amount of \$10,000 to ESP.<sup>6</sup> ESP filed a response to the *NAL* on March 7, 2006 ("*Response*"). In the *NAL*, the Los Angeles Office determined that ESP apparently willfully and repeatedly violated Section 301 of the Act<sup>7</sup> by operating an unlicensed land mobile transmitter on 856.3625 MHz near Las Vegas, Nevada. In its *Response*, ESP does not dispute the facts in the *NAL*, but requests a reduction in the forfeiture amount based on the fact that ESP at one point in time had a license for 856.3625 MHz at another site in the same Las Vegas market; that the operation at the unauthorized location caused no known interference; and because of ESP's history of FCC rule compliance.

### III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>8</sup> Section 1.80 of the Rules,<sup>9</sup> and *The Commission's Forfeiture Policy Statement and*

<sup>4</sup> See Application Nos. 0001888410 and 0001970542.

<sup>5</sup> Prior to the license assignment, ESP executed, and filed with the Commission, a "De Facto Transfer Lease" of the licenses to AIRPEAK which commenced on October 8, 2004 and expired on April 6, 2005.

<sup>6</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200632900006 (Enf. Bur., Western Region, Los Angeles Office, released February 9, 2006).

<sup>7</sup> 47 U.S.C. § 301.

<sup>8</sup> 47 U.S.C. § 503(b).

<sup>9</sup> 47 C.F.R. § 1.80.

*Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”). In examining ESP’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>10</sup>

8. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license. While it still held licenses WPOX419 and WPOX417, ESP relocated its transmitters without authority to Black Mountain, Nevada, and, from December 15, 2004, to April 28, 2005, ESP operated a transmitter on Black Mountain without a license.

9. ESP does not dispute the facts detailed in the *NAL*. Instead, it requests that the forfeiture amount be reduced because ESP previously held a license for operation on 856.3625 MHz at a different location but in the same market where the violation took place. We note that ESP’s authorization to operate on 856.3625 MHz was assigned to AIRPEAK on December 14, 2004, and, therefore, ESP was no longer authorized to operate on that frequency. ESP did not have an authorization to operate on 856.3625 MHz beginning December 15, 2004, and it did not stop its unauthorized operation until notified by the Los Angeles Office on April 27, 2005. ESP acknowledged in its response to the Los Angeles Office’s LOI that while it still held the authorizations for WPOX419 and WPOX417, in September 2004, it relocated the transmitters for those stations without authority. As noted in the *NAL*, that unauthorized relocation in September 2004 violated Section 1.903(a) of the Rules.<sup>11</sup> We do not agree that we should reduce the proposed forfeiture to \$4,000 because, as ESP opines, “the violation might properly be characterized as operation at an unauthorized location, with a base forfeiture of \$4,000 . . . .”<sup>12</sup> To do so ignores the fact that ESP had no authorization to operate. However, we do find that that ESP’s unlicensed operation is not analogous to the “intentional unlicensed operation of a ‘pirate’ station operator who operates in flagrant violation of Commission Rules.”<sup>13</sup> We therefore reduce ESP’s forfeiture amount to \$8,000.

10. ESP also alleges that a downward reduction is warranted because the unlicensed operation did not cause interference. We disagree. An absence of interference during its unlicensed operation does not entitle ESP to a reduction of the forfeiture amount under the Commission’s downward adjustment criteria for forfeitures.<sup>14</sup>

11. ESP also requests that the forfeiture amount be reduced because it has a history of compliance as a Commission licensee. We have reviewed our records and we find no instances of ESP having received a forfeiture or violation notice. Consequently, we reduce ESP’s forfeiture amount by another \$2,000.

12. We have examined ESP’s response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that ESP willfully and repeatedly violated Section 301 of the Act.<sup>15</sup> Considering the entire record and the factors

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<sup>10</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>11</sup> 47 C.F.R. § 1.903(a).

<sup>12</sup> *Response* at 2.

<sup>13</sup> *Gateway Security Systems, Inc.*, 18 FCC Rcd 24026, 24029 (EB 2003).

<sup>14</sup> 47 C.F.R. § 1.80(b), note to paragraph (b)(4), *Section II. Adjustment Criteria for Section 503 Forfeitures*. See *Page-Comm*, 16 FCC Rcd 6842, 6845 (EB 2001). See also *New York Radio Service*, 19 FCC Rcd 10704 (EB 2004).

<sup>15</sup> 47 U.S.C. § 301.

listed above, we find that reduction of the proposed forfeiture is warranted, given the circumstances surrounding ESP's unauthorized operation and its compliance record with the Commission's Rules. Accordingly, the forfeiture amount is reduced from ten thousand dollars (\$10,000) to six thousand dollars (\$6,000).

#### IV. ORDERING CLAUSES

13. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, ESP Leasing Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$6,000 for willfully and repeatedly violating Section 301 of the Act.<sup>16</sup>

14. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>17</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911- 6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.<sup>18</sup>

15. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to ESP Leasing Corporation at its address of record, and Elizabeth R. Sachs, Esquire, Lukas, Nace, Gutierrez & Sachs, Chartered, its counsel of record.

#### FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch  
Regional Director, Western Region  
Enforcement Bureau

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<sup>16</sup> 47 U.S.C. §§ 301, 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>17</sup> 47 U.S.C. § 504(a).

<sup>18</sup> See 47 C.F.R. § 1.1914.